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REMARKS

SEP 15 2008

Reconsideration of this application, as amended, is respectfully requested.

In the Official Action, the Examiner rejects claims 33-58 under 35 U.S.C.

§ 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In response, claims 33-58 have been canceled, thereby rendering the rejection thereof moot. Accordingly, it is respectfully requested that the rejection of claims 33-58 under 35 U.S.C. § 112, second paragraph, be withdrawn.

In the Official Action, the Examiner rejects claims 33-35, 38-40, 44, 46-48 and 53 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,846,241 to Kittur et al., (hereinafter "Kittur").

In response, claims 33-35, 38-40, 44, 46-48 and 53 have been canceled, thereby rendering the rejection thereof moot. Consequently, the Examiner is respectfully requested to withdraw the rejection of claims 33-35, 38-40, 44, 46-48 and 53 under 35 U.S.C. § 102(b).

Furthermore, new claims 59-71 have been added to further define the patentable invention. New claims 59-71 are fully supported in the original disclosure.

Specifically with regard to new independent claim 59, the same recites the features of canceled claims 1 and 6 and also recites that the diathermic cutter is of a monopolar type. Furthermore, in the diathermic cutter recited in new claim 59, electrodes are not provided opposite to each other as is disclosed in Kittur. Therefore, new claim 59 patentably distinguishes over Kittur in both structure and how the cutter is used to cut living tissue (the method of using the cutter). In addition, new claim 59 teaches that an electrode

and an elongated member form a single electrode member. Such a structure is not disclosed or suggested in the bipolar electrocautery valvulotome of Kittur. Thus, new claim 59 patentably distinguishes over that which is disclosed in Kittur.

New claims 60-62 correspond to canceled claims 7-9, respectively.

New claim 63 is fully supported in the original disclosure, such as at Figures 4C and 5C.

New claim 64 incorporates a limitation concerning an electrode and an electrically insulating member, in addition to the limitation of canceled claim 63.

New claims 60-64 depend on new claim 59, and recite the monopolar type of diathermic cutter. Therefore, these claims, as well as the new independent claim 59, patentably distinguish over Kittur, which discloses a bipolar electrocautery valvulotome in structure and method of using the same.

Applicants also respectfully submit that new claims 59-64 patentably distinguish over each of Maslanka, Ryan, Rydell and Ouchi in both structure and use.

New independent claim 65 recites the features of canceled claims 1 and 10 and further recites that the diathermic cutter is of a bipolar type. Furthermore, the bipolar type of diathermic cutter recited in new claim 65 comprises an electrode and a first cylindrical member which is electrically conductive and which is provided at the elongated member.

Furthermore, it should be noted that in the bipolar electrocautery valvulotome of Kittur, electrodes are located opposite to each other. However, Kittur does not disclose a first cylindrical member that is conductive, and is provided at the elongated member as recited in new claim 65. Therefore, the diathermic cutter of new claim 65 patentably distinguishes

over the bipolar electrocautery valvulotome of Kittur in both structure and use (method in cutting of tissues).

New claim 66 recites the features of canceled claim 38 in a form that is consistent with the new claim 65.

New claims 67-69 recite features of canceled claims 11-13, respectively.

New claim 70 is fully supported in the original disclosure, such as at Figures 4C, 5C and 14.

New claim 71 recites an electrode and an electrically insulating member, in addition to the features recited in the new claim 70.

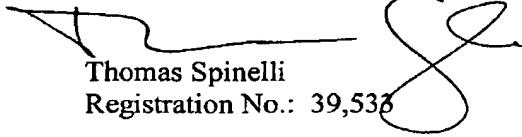
New claims 66-71 depend on new claim 65. Therefore, these claims, as well as the new independent claim 59, patentably distinguish over Kittur. Applicants also respectfully submit that new claims 65-71 patentably distinguish over each of Maslanka, Ryan, Rydell and Ouchi in both structure and use and individually and in combination.

In view of the above, no new matter has been entered into the disclosure by way of the addition of new claims 59-71. Applicants submit that independent claims 59 and 65 patentably distinguish over the prior art and are allowable and that claims 60-64 and 66-71 are at least allowable as being dependent therefrom.

In view of the above, it is respectfully submitted that this application is in condition for allowance. Accordingly, it is respectfully requested that this application be allowed and a Notice of Allowance issued. If the Examiner believes that a telephone

conference with Applicants' attorneys would be advantageous to the disposition of this case, the Examiner is requested to telephone the undersigned.

Respectfully submitted,


Thomas Spinelli
Registration No.: 39,538

Scully, Scott, Murphy & Presser, P.C.
400 Garden City Plaza, Suite 300
Garden City, New York 11530
(516) 742-4343
TS:cm